

# MINUTES OF THE BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS

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June 28, 2012

**Board Members Present:** Jerry Silva, President; Paul Wilburn, Vice President; Carl Josephson; Mike Modugno; Philip Quartararo; Hong Beom Rhee; Patrick Tami; Michael Trujillo; and Erik Zinn.

**Board Members Absent:** Ray Satorre

**Board Staff Present:** Ric Moore (Executive Officer); Joanne Arnold (Assistant Executive Officer); Nancy Eissler (Enforcement Manager); Celina Calderone (Board Liaison); Ray Mathe (Staff Land Surveyor); Susan Christ (Staff Civil Engineer); Patty Smith (Analyst, Geology Program); Larry Kereszt (Enforcement Analyst); Tiffany Criswell (Enforcement Analyst); Linda Brown (Administrative Manager); Jeff Alameida (Budget Analyst) and Gary Duke (Legal Counsel).

## I. Roll Call to Establish a Quorum

Roll call was taken and a quorum was established.

## II. Public Comment

**NOTE:** The Board cannot take action on items not on the agenda. The Board will allow for Public Comment on both days, as well as during the discussion of each item on the agenda.

No comments were offered

## XIV. Information Technology Updates

### A. Request for Change/Online Renewals

Mr. Donelson discussed the status for the request for change and online renewals. Currently, the Board processes on-line renewals for civil, electrical, mechanical, and land surveyors that meet certain requirements. If they do not meet these requirements, the licensee must go through the traditional method of renewing. To date the board has processed 1,145 on-line renewals. The second phase of adding the additional disciplines has been in discussion with the Office of Information Services (OIS) since May. The process for this involves a request for change which was completed and sent to the Business and Technology Review Committee. When it was reviewed, the Board was instructed to complete a Legacy Hard-Freeze exemption form which is associated with the BreZE project. Mr. Donelson added that the form is being completed and will be directed

to the OIS staff to analyze the cost impact to the BreEZe system. His purpose is to inform the Board of the process as it appears to be more time consuming than anticipated.

## **VII. Executive Officer's Report**

### **A. Legislation**

#### **1. Discussion of Legislation for 2011-2012**

##### **a. Pending Legislation:**

**AB 1588** Atkins. Professions and vocations: reservist licensees: fees and continuing education. This bill would require the boards within Consumer Affairs to waive the renewal fees and continuing education requirements, if applicable, of any licensee who is a reservist called to active duty as a member of the United States Military Reserve or the California National Guard if certain requirements are met.  
BOARD POSITION: Support

**AB 1750** Solorio. Rainwater Capture Act of 2012. This bill would authorize residential, commercial, and governmental land owners to install, maintain, and operate rain barrel systems and rainwater capture systems, as defined provided that the systems comply with specified requirements.  
RECOMMENDED POSITION: Watch

**MOTION:** Mr. Tami/Mr. Josephson moved to watch.

**VOTE:** 9-0, motion carried.

**AB 1904** Block. Professions and vocations: military spouses: expedited licensure. This bill would require a board within DCA to expedite the license process for an applicant who, holds a license in another jurisdiction, and is married to, or in a legal union with, an active duty member of the Armed Forces of the United States assigned to duty in California.  
RECOMMENDED POSITION: Watch

**MOTION:** Mr. Josephson/Mr. Modugno moved to watch.

**VOTE:** 9-0, motion carried.

**AB 2570** Hill. Licensees: settlement agreements. This bill would prohibit a licensee who is regulated by DCA, from including or permitting to be included a provision in an agreement to settle a civil dispute that prohibits the other party in that dispute from contacting, filing a complaint with, or cooperating with the department, board, bureau or program, or that requires the other party to withdraw a complaint from the department, board, bureau, or program.  
RECOMMENDED POSITION: Support

**MOTION:** Mr. Zinn/Dr. Rhee moved to support.

**VOTE:** 9-0, motion carried.

- SB 975** Wright. Professions and vocations: regulatory authority. This bill would provide that all boards, bureaus and commissions of Consumer Affairs have sole authority to license and regulate the practice of the professions they regulate. No licensing requirements, as specified, shall be imposed upon a person licensed to practice one of those professions by code or by regulation promulgated except by the applicable board, bureau, or commission.  
BOARD POSITION: Watch
- SB 1061** Walters. Professional Engineers. This bill (which is identical to last year's SB 692) would change the disciplines currently licensed as "title act" engineers to "practice act" engineers. This bill also would authorize any licensed engineer to practice engineering work in any of those fields in which he or she is competent and proficient – but not necessarily licensed. This bill is dead.  
BOARD POSITION: Oppose
- SB 1576** Committee on Business, Professions and Economic Development. Professions and vocations. This is one of the Committee's omnibus bills. (Amends sections 8741, 8762 and 8773 of the LS Act.) This bill, among other things, revises the exemption from the taking of the LSIT to civil engineers licensed prior to January 1, 1982. It also expands the definition of "establish" when filing a record of survey to include "location, relocation, reestablishment or retracement."  
RECOMMENDED POSITION: Support
- MOTION:** Mr. Tami/Mr. Modugno moved to support.  
**VOTE:** 9-0, motion carried.

**VI. Temporary Authorization Application for Stephen Palmer**

Mr. Moore indicated that Mr. Stephen Palmer appeared at the May 15, 2012 board meeting but because a quorum could not be established, the board was not able to hear Mr. Palmer's testimony and take action. Mr. Palmer agreed to call in via teleconference to answer any questions the board members may have regarding his request for temporary authorization.

Mr. Palmer stated that he works for GeoDesign Inc. from Portland, Oregon and added that they also have another office in Anaheim that does projects mainly in the Los Angeles area. Their certified engineering geologist in the Anaheim office recently left the company as an interim and it was decided that Mr. Palmer would attempt to obtain a temporary authorization to act as the Certified Engineering Geologist for a project in West Hollywood, CA. It involves review of previous fault investigations, sub-surface drilling investigations at the site in order to provide input to the geotechnical engineers and also confirm or indicate whether additional fault investigation studies were necessary. He added that he has also decided to apply for permanent licensure in California. Mr. Zinn enquired whether or not Mr. Palmer's client is aware that there are other engineering geologists in Southern California that could do the work. Mr. Palmer agreed that there are other engineering companies that could do the work but the client has made this choice because of the geotechnical engineer involved.

**MOTION:** Mr. Zinn/Mr. Trujillo moved to grant.  
**VOTE:** 9-0, motion carried.

**V. Nomination and Election of President and Vice President for Fiscal Year 2012-2013**

Mr. Tami and Mr. Modugno nominated Paul Wilburn as President and Erik Zinn as Vice President

**MOTION:** Mr. Tami/Mr. Quartararo moved to close nominations.  
**VOTE:** 9-0, motion carried.

**MOTION:** Mr. Tami/Mr. Modugno moved to elect Paul Wilburn as President and Erik Zinn as Vice President.  
**VOTE:** 9-0, motion carried.

**VIII. Division of Investigation Presentation**

Daryl Walker, Chief of the Department of Investigation (DOI) provided background on himself and the division. His background involves 32 years in law enforcement, starting as a police officer, after receiving his bachelor's degree in public administration and has held various investigative positions at the state level. He spent 10 years doing political corruption investigations with the Fair Political Practices Commission and then onto the emergency medical services authority to assist in assembling their enforcement program. He has worked for the Medical Board as a field investigator and ultimately became a commander overseeing four other northern California field offices. Five years ago he arrived at the Division of Investigation as Deputy Chief and two years ago he was sworn in as Chief of the Division.

The Division of Investigation provides services for approximately 40 different boards and bureaus. Their expertise is to learn how to extract information for boards and bureaus. He indicated there are 255 professional licenses and approximately 2.5 million practitioners in various licensing bodies under the Department of Consumer Affairs umbrella which keep the Division busy at all times.

The Division is the law enforcement arm of the Department of Consumer Affairs. Their investigators are Peace Officers under 830.3 of the penal code. All investigators are P.O.S.T. certified which stands for Pease Officers Standards in Training. They do ongoing continuing education in order to maintain their certification.

The Division was formed in 1968 and currently has approximately 57 sworn staff out of 80 employees spread throughout seven field offices throughout the state. DOI has a Special Operations Unit (SOU) which consists of a commander and five investigators. Their role includes internal affairs investigation within the Department of Consumer Affairs at the behest of the Director. They conduct background investigations and any other special operations that may be needed such as security at board meetings. The majority of their time involves doing internal affairs investigations for theft and violence in the workplace.

The cases they are involved in include administrative and criminal. Over time they are doing more criminal cases which involve battery, manslaughter, sexual misconduct, theft, gross negligence, and unprofessional conduct. At any given time, the division carries about 800 cases.

They have been doing a lot more in the way of search warrants at the request of the Board. Arrest rates have gone up substantially due to sting operations. Citations are issued to them and released. If they have a warrant they are arrested.

Another service provided by DOI is computer forensic services with services in Sacramento, Southern California, and in the Bay area. Once a computer is seized, it is run through a software system where despite being password protected and deleted they can still acquire the files.

One of the concerns Mr. Walker had when he arrived at the Department was that occasionally they worked criminal administrative cases parallel with each other. The allegations can be handled administratively by the board or bureau but the allegations should be handled criminally as well. The problem they faced was the standard of proof for criminal cases are higher than an administrative case. Typically, they would have enough evidence to assemble for the Board to move forward to take administrative action. However, they would hang on to the case while still working the criminal component. Once there is enough information on an administrative case, they will forward it onto the board or bureau to take appropriate action while DOI continues work on the criminal component and getting it to the District Attorney's office.

He added that approximately 5 years ago prior to his arrival at the Department, there appeared to be an issue in which cases were not running as efficiently as they could. They had 31 cases over three years old, 139 cases that were 2-3 years old and 389 that were 1-2 years old that had yet to be completed. Currently, they have 4 cases that are over a year old that are criminal cases that the District Attorney has asked them to do additional work. Their case completion rate is 170 cases per month when it used to average around 95 and their average case completion time is six months.

Working with the boards, they developed a filtering system of what should come to them to help reduce caseload.

They have developed an intake unit that provides services that do not require a peace officer. This unit consists of a supervising investigator that has background in field operations and four analysts. All the complaints that come to them is initially reviewed by the intake unit and they gather documentation and determine what can be handled by them or what goes to the field.

In conclusion, Mr. Walker indicated that he is very pleased with the Board and its functions. July 17, 2012 is his last day as Chief and will be falling back on his civil service position as Deputy Chief. He assures that all functions will continue to move forward.

## **IX. Enforcement**

### **A. Enforcement Statistical Reports**

Ms. Eissler reported that the statistical reports that are included in the agenda revealed that the cases are aging and are investigating the reason why. The enforcement unit implemented a new process for contracting with the experts that may have contributed to the delay. She indicated that she and Mr. Moore are looking into the bottleneck for the investigative portion of the cases. The enforcement unit has been making great progress in reducing the backlog of cases that were awaiting the issuance of a citation and moving forward with the appeal process.

Duties have been shifted in the unit to become more efficient in handling the citation program and are reducing the backlog of cases to be referred to the Attorney General's office.

Mr. Modugno would like to set goals by establishing a benchmark, and see a side-by-side comparison from one year to the next to determine where improvement is needed.

Ms. Eissler added that the board is always in need of people to volunteer to be experts and encourages people to contact the board if they are interested. She would like to provide a presentation for the complaint investigation procedure at the next board meeting to better assist board members in understanding the process.

## **VII. Executive Officer's Report (cont.)**

### **B. Strategic Plan Update**

Mr. Alameida provided a status report of the Board's strategic plan and the progress that the board has made. Mr. Moore indicated that the board would present an action plan for the upcoming fiscal year at the next board meeting and requested input from the board.

### **C. Personnel**

Mr. Moore reported that as part of the new fiscal year budget, the Governor is proposing the elimination of retired annuitants and student assistants that are not considered mission critical. The board was asked to provide justification for the retired annuitants but not for the two student assistants which indicate they would be released as well if the department does not approve the justification for the retired annuitants.

The board currently has two half time vacancies and is working with the Department to combine the two into one full time position for examination and licensing. Another vacancy is the fingerprinting position that would bridge between enforcement and applications.

Mr. Moore added that with the new budget, the Governor is imposing a 5% pay cut to all state employees including a one day per month furlough.

## **X. Exams/Licensing**

### **A. April/June 2012 Examination Update**

Mr. Mathe reported statistics for the April 2012 PE and LS examinations.

The National Professional Land Surveyor examination

131 tested, 63 passed for a 48% pass rate.

The State Specific Land Surveyor examination

384 tested, 91 passed for a 24% pass rate.

The Civil engineering examination

1,758 tested, 683 passed for a 39% pass rate.

Seismic Principles and Engineering Surveying examination results were being processed on June 28 and result letters should be mailed the following day.

Chemical Engineering examination

35 tested, 14 passed for a 40% pass rate

Electrical Engineering examination

332 tested, 108 passed for a 33% pass rate

Mechanical Engineering examination

279 tested, 140 passed for a 50% pass rate

National Structural examination

Lateral – 172 tested, 71 passed for a 41% pass rate

Vertical – 177 tested, 62 passed for a 35% pass rate

For the LSIT, it was reported that:

99 were tested, 44 passed with a 44% pass rate

For the EIT, it was reported that:

3,265 were tested, 1,866 passed for a 57% pass rate

The first administration of the Professional Land Surveyor examination utilizing computer based testing resulted in 403 scheduled with only 19 no-shows for a 4.7% no show rate. With traditional examinations, there is generally a 20-30% no show rate. The general comments from the surveying community were positive. Professional associations and those who provide land surveyor review courses indicated that they felt the examination licensed those who they believed should pass compared to those they did not feel as engaged that did not pass. There was also some speculation from the design/essay problems to a multiple choice examination and whether or not it would test at the right cognitive level. The test performed very well. It included 67 new problems and only had issues with two of the 67 problems. Psychometricians indicated that it was a very defensible and well performed examination.

1. Update on Office of State Publishing examination book error

Mr. Mathe reiterated what transpired with the State Civil, engineering surveying examination. The office of State Publishing has admitted that the printing error was their fault and is willing to work with the Board to come to a resolution and compensation for the cost to print the examination.

Mr. Mathe further explained the CBT was the quickest way to administer the examination. About 25% of the population comes from outside the state of California to sit for the examination. The CBT contractor was notified April 20, 2012 to commence scheduling candidates for June 2 through June 9, 2012. On April 23, the examination book was converted to computer based. Prometric trained their staff on the administration of the examination as most exams do not allow reference materials in the room. Prometric reported issues that involved computer malfunction for a significant amount of time and an employee that did not follow protocol in which a candidate was not allowed to bring reference materials another was not allowed to bring their calculator. The board is looking to mitigate those issues with Prometric.

A comparison of the no show rate indicated that for the April 12 examination there was a 22% no show rate compared to the computer based re-test, there was a 2.5% no show rate which reveals a significant drop.

B. October 2012 Examination Update

Mr. Mathe indicated that letters were sent out to all new applicants regarding new fees and refunds. There have been many inquiries from the candidate population however; they understand why fees were increased. Although they may not be happy with the increase, they understand. In addition, Mr. Mathe wanted to

provide reassurance to the EIT/LSIT candidate population regarding the new application process that the candidates do not have to do something with the board before the examination is administered.

He added that the October examination dates are available on the Board's website.

Guam utilizes California's Seismic Principles examination in addition to the National examination to license their licensees. The Board sends approximately 3-5 examinations every exam cycle at their request. They are then returned to the board and are graded and scored along with our examinations. There have been requests to have the examination administered all over the world. One example is a request from Japan. Mr. Mathe wants feedback from the Board regarding opening the Guam site to candidates from overseas as Prometric has a test site there. The board did not foresee a problem and agreed.

Mr. Philip Quartararo excused himself from the remainder of the meeting.

C. Cooperative Licensure Agreement with Washington State for Certified Engineering Geologists and Certified Hydrogeologists

Mr. Moore summarized by indicating that in 2003 such an agreement existed regarding reciprocity in both states. The agreement was made that if someone was an engineering geologist or certified Hydrogeologist, in one of the states and desired to become an engineering geologist in the other state, they would accept the criteria and would not require further examination. The Washington board has requested that the California board formalize the agreement.

Mr. Duke was legal counsel to the Geology Board at the time and the former Executive Officer on a regular basis denied applications for comity from the state of Washington. At that time, Washington was not using the ASBOG examination therefore the Executive Officer had good reason. The Executive Officer participated in Governor's Schwarzenegger's project to reorganize California Government by assembling a task force formed of volunteers of State employees. The Executive Officer worked on the committee and as a result, the Executive Officer was gone from the board for approximately 3-6 months. During this time, a board meeting was held and the board, using its authority granted licensure to an applicant from the state of Washington that took the ASBOG examination and met all of the California requirements. The Executive Officer was directed to work with the Office of Examination Resources. A comparison was conducted between the two examinations and it was determined that the two examinations were functionally equivalent.

Mr. Moore suggested more research needs to be done and Mr. Zinn indicated that the key is to verify that the examinations are similar. Mr. Moore indicated that the Washington board submitted a Memo of Understanding (MOU). He would like the Washington board to know that California is receptive and would like to discuss further so that the board can make a final decision and believes Oregon should be included in the MOU for the CEG as the State of Oregon does not have a CHG.

Mr. Duke sees two issues; are the examinations still equivalent and should we allow reciprocity and asked whether the board wants to link that into the cooperative examination development within the same MOU. Mr. Moore would like to take action at the next board meeting.



## **XII. Approval of Delinquent Reinstatements**

**MOTION:** Mr. Tami/Mr. Carlson moved to approve.

**VOTE:** 8-0, motion carried.

## **XI. Outreach**

Request for Articles for the Summer Bulletin

Mr. Moore requests articles for the summer bulletin be submitted by July 15 and recalled Mr. Silva's request to have an exit article for the outgoing president and have the new president write one as well. He also added that there will be articles regarding the new fees, new website for an August bulletin. Mr. Zinn suggested an overview article of the integration of the Geology board within the board.

## **XIII. Consideration of Rulemaking Proposals**

- A. Status of Rulemaking Proposal to Amend Title 16, California Code of Regulations section 443 (Inspection of Examination)

Effective June 18, 2012, with the release of the structural engineer results, no longer is the board allowing for appeals as there are no design essay questions for state and national examinations. Ms. Eissler indicated the board was just removing the portion that allowed appeals of the NCEES examinations. As the Board has moved to CBT for state examinations, there are no more exams that can be appealed so the board may be looking into whether the regulation should be repealed. It would be brought back to the board after discussing with legal counsel to determine if it should be repealed.

- B. Request for Regulatory Action pursuant to Government Code section 11340.6 – Request to Amend Title 16, California Code of Regulations section 424 (Experience Requirements – Professional Engineers)

Ms. Eissler reported that this a formal request from a member of the public asking the Board to take regulatory action. The Government Code that addresses the rulemaking process provides that members of the public may submit requests to the Boards recommending regulatory action. The board has received a request from William Johns to amend Board Rule 424. It relates to the education and experience requirements that an applicant for licensure as a professional engineer must meet. Mr. Johns is recommending a provision in the regulation be amended. The current regulation states the additional actual work experience required to meet the six years of experience requirement shall have been gained after graduation except for cooperative work study experience and post graduate education. He is recommending that it be amended to remove the provision that says, *Shall have been gained after graduation to shall not have been gained concurrently with credit claimed for education*. The explanation for his request is that he has indicated that his belief that the way the regulations are currently worded, a person who may have worked in the engineering field and decided to go to college to acquire their engineering degree cannot use that work experience gained before they went to college because the way the regulation is worded. The regulation indicates that all of the work experience credit that is used can only be that gained after graduation. She further explained that if a person is claiming educational credit as part of their experience credit to obtain licensure, for an ABET accredited bachelor's degree, they would receive four

years of experience credit for that education, the regulation then says that the work experience credit must be gained after the graduation date. Therefore, any work experience prior to college, cannot be used per the board's policy. Ms. Christ confirmed that the law indicates that after graduation you start your work experience which must be complete by the final filing date. Ms. Eissler added that the Board's evaluators when reviewing applications determine the date the degree was awarded according to the transcript and the registrars count from that date in determining how much qualifying experience the applicant has.

**MOTION:** Mr. Zinn/Dr. Rhee moved to deny request.

**VOTE:** 8-0, motion carried.

## **XV. Administration**

### **A. FY 2011/12 Budget Overview**

Mr. Alameida provided a budget overview for the engineers and land surveyors (PELS) fund and the geologists and geophysicists (GEO) fund. He provided a comparison of April 30, 2011 and April 30, 2012. He indicated that the PELS fund is very close to its budget allotment with an \$818.00 surplus. As for the GEO fund, they have a \$457,000 surplus. This includes contract encumbrances that the board will receive invoices and savings should result in those contracts. Mr. Alameida indicated that the board has contracted with NCEES for approximately \$3.2 million dollars for exam administration. The prior year the board saw about a \$300,000 savings from one administration. If the same result occurs with the invoices in regards to this April's exam administration, disencumbering those contracts will create the savings required to get through the end of the year. The projection that indicates \$818.00 identifies paying all invoices in full. If the board meets the end of the year and disencumbers some of the savings, the board will have a surplus.

## **XVI. Technical Advisory Committees (TACs)**

### **A. Board Assignments to TACs**

Mr. Moore provided a status update regarding the administrative committee. The board asked him to come up with nominations to form the committee. His concern is if there is enough direction before starting the committee as it is very broad. Topics that would be discussed are process improvement, public relations, important topics that address something outside the Board's normal scope of work.

### **B. Appointment of TAC Members**

#### **Appointment of Land Surveyor TAC members**

**MOTION:** Mr. Silva/Mr. Zinn moved to appoint.

**VOTE:** 8-0, motion carried.

#### **Appointment of Geologist and Geophysicist TAC members.**

**MOTION:** Mr. Tami/Mr. Modugno moved to appoint.

**VOTE:** 8-0, motion carried.

### **C. Reports from the TACs - No Report Given**

## **XXI. Approval of Consent Items**

(These items are before the Board for consent and will be approved with a single motion)

following the completion of Closed Session. Any item that a Board member wishes to discuss will be removed from the consent items and considered separately.)

- A. Approval of the Minutes of the March 8-9, 2012, May 15, 2012, and June 5, 2012, Board Meetings

**MOTION:** Mr. Silva/Mr. Tami moved to approve.

**VOTE:** 8-0, motion carried.

#### **XVIII. Dates of August Board Meeting**

August 23-24, 2012 was the original date of the next board meeting but because it coincides with the NCEES Annual Meeting, the meeting was rescheduled to August 29-30, 2012.

#### **XIX. President's Report/Board Member Activities**

Mr. Silva thanked Board staff for their time and was presented a gavel plaque by Mr. Moore for his time as Board President.

Mr. Josephson indicated that he is still working with the refugee engineers in San Diego and made a presentation about licensing and will meet with the ASCE in July.

Mr. Moore added that the Board received requests from the Los Angeles, ASCE Young Engineers association. They have requested a speaker from the Board to discuss the new fees and the application and examination processes. Board members may be called upon to see if they are interested in making a presentation. With the changes in the fees, examinations, and processes, the board may be able to justify the travel necessary to attend.

Another request has come in from Cal State Fullerton to speak to an engineering class regarding licensure.

#### **XVII. Liaison Reports**

- A. ASBOG – No report given

- B. ABET – No report given

- C. NCEES – The Board is working internally with a committee toward being prepared for the April 2013 Western Zone meeting in San Francisco. The board will present recommendations on budget, events, plans, schedule that must be presented to the Western Zone leadership for approval.

- D. Technical and Professional Societies - Mr. Moore, Mr. Mathe, and Ms. Eissler have been invited to speak at various CLSA chapter meeting over the next few months all within driving distance.

Mr. Moore added the Mr. Kereszt with the Board's enforcement unit, has agreed to work with Mr. Mathe on a webinar for CLSA geared toward monument preservation.

- III. Closed Session** – Personnel Matters, Examination Procedures and Results, Administrative Adjudication, and Pending Litigation (As Needed) [Pursuant to Government Code sections 11126(a) and (b), 11126(c)(1), 11126(c)(3), 11126 (e)(1), and 11126(e)(2)(B)(i)]

#### **IV. Open Session to Announce the Results of Closed Session**

During Closed Session the Board took action on one stipulation and two petitions for reconsideration.

**XX. Other Items Not Requiring Board Action**

**XXI. Adjourned at 4:13 p.m.**

**PUBLIC PRESENT**

Roger Hanlin, CLSA

Daryl Walker, Department of Investigation

Steve Hao, CalTrans

Daniel Kramer, Neil O. Anderson & Associates